



S/N 10/666,681

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Leonard Robert Speiser et al.	Examiner:	Gerald O'Connor
Serial No.:	10/666,681	Group Art Unit:	3627
Filed:	September 18, 2003	Docket:	2043.093US1
Title:	PRODUCT RECOMMENDATION IN A NETWORK-BASED COMMERCE SYSTEM		

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REMARKS**

The applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. Review is requested for the reason(s) stated below:

**1. The § 102 Rejection of claims 15-22 using Spiegel.**

Applicants respectfully submit that a *prima facie* case of anticipation of claims 15-22 has not been established because Spiegel fails to disclose all elements of the present claims.

In particular, Applicants cannot find in the cited portions of Spiegel any disclosure of “identifying at least one frequently used search term associated with the identified division; and providing a link to the user to listings associated with the at least one frequently used search term” as presently recited in claim 15.

Instead, Spiegel apparently describes identifying a popular node (e.g., a category or product) in a “browse tree,” where the node’s popularity may be based on various criteria. *See* Spiegel at col. 6, lines 5-29. For example, criteria used to indicate a category node’s popularity include “the number of purchases made within each category, the number of searches performed within each category, [and] click-through counts.” *See* Spiegel at col. 6, lines 21-26. However, Spiegel apparently does not describe using frequently used *search terms* to identify popular nodes (e.g., categories or products). While, Spiegel does discuss the use of a “number of searches performed within [a] category” as an example of a criterion that may be used to indicate popularity, Applicants respectfully argue that the number of searches performed within a

category node merely indicates the use or traffic within a category. There is a distinct difference between the number of times a search is performed in a category and the frequently used search terms. It appears that frequently used search terms are simply not identified or used in Spiegel. In fact, the phrase “search term” does not appear anywhere in the Spiegel reference.

In an effort to cure this deficiency, the Final Office Action attempts to provide an example of a frequently used search term by citing the phrase “Olympics” as shown in FIG. 1A. *See* Final Office Action at ¶ 6. However, “Olympics” is a title of a category, as demonstrated by being listed under a “Featured Categories” header, and is not a frequently used search term as the Final Office Action asserts. *See* Spiegel at FIG. 1A; col. 7, line 12. Presumably, the “Olympics category” was promoted to its featured status based on a popularity score, as discussed above and as described in Spiegel at col. 7, lines 6-67. While the popularity score may be a function of several factors, none of the factors described or disclosed in Spiegel include frequently used search terms. Even in the case where the term “Olympics” is construed as a search term, it is not a “frequently used search term” as described in Applicants’ present application.

Moreover, after recognizing that “Olympics” is referring to a category, not a “frequently used search term,” Applicants respectfully argue that the Final Office Action’s assertion that Spiegel discloses “providing a link to the user to listings associated with the at least one frequently used search term,” as also recited in claim 15, must also fail. While Applicants concede that hyperlinks are disclosed in Spiegel, and in fact the category “Olympics” may appear as a hyperlink in some embodiments, Applicants do not concede that such a hyperlink references a “listing associated with at least one frequently used search term,” as required by claim 15. As Spiegel apparently does not disclose or describe frequently used search terms, it defies logic to conclude otherwise.

Regarding dependent claims 16-22, these claims depend from claim 15, either directly or indirectly, and are therefore believed to be patentable at least for the foregoing reasons. Thus, Applicants respectfully request withdrawal of the basis of rejection of these claims.

In sum, because the cited portions of Spiegel apparently do not disclose all elements recited or incorporated in claims 15-22, Applicants respectfully submit that there is no *prima facie* case of anticipation of these claims. Therefore, Applicants respectfully request reversal of all bases of rejection of all claims.

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**CONCLUSION**

The Applicants respectfully submit that all of the pending claims are in condition for allowance, and such action is earnestly solicited. The Examiner is invited to telephone the below-signed attorney at 408-278-4042 to discuss any questions which may remain with respect to the present application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date July 18, 2006

By

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 18 day of July, 2006.

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